



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/576,706	05/22/2000	Burch E. Zehner	1002-171B	6333

8698 7590 11/14/2002

STANDLEY & GILCREST LLP
495 METRO PLACE SOUTH
SUITE 210
DUBLIN, OH 43017

EXAMINER

SZEKELY, PETER A

ART UNIT

PAPER NUMBER

1714

DATE MAILED: 11/14/2002

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/576,706

Applicant(s)

ZEHNER, BURCH E.

Examiner

Peter Szekely

Art Unit

1714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 21-40 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 21-40 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 May 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Art Unit: 1714

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 21-40 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure, which is not enabling. The means of forming the final shape critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). The material coming through the die is either in the form of a bubble or in the form of a string. In order to achieve a "final shape" the material has to be molded, or slit and flattened, or calendered.

Double Patenting

3. Claims 1-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,011,091. Although the conflicting claims are not identical, they are not patentably distinct from each other because when the thermosetting material is not present, the formulations are identical. Claims 1-13 have not been canceled. Claims cannot be canceled in the "Remarks"; they have to be canceled by amendment.
4. Claims 1-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,103,791. Although the conflicting claims are not identical, they are not patentably

Art Unit: 1714

distinct from each other because when the thermosetting material is not present, the formulations are identical. Claims 1-13 have not been canceled. Claims cannot be canceled in the "Remarks"; they have to be canceled by amendment.

Claim Rejections - 35 USC § 102

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1-13 and 28-40 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Cope 5,847,016, Cope 5,951,927 or Cope 6,066,680, in view of Waki et al. 4,800,214 or Brandt 6,117,924.

7. The rejection is not improper. It is a combined 102/103 rejection. It means that the claims are anticipated by any of the primary references, or in the alternative, if the anticipation does not apply to some claims, then those claims are deemed to be obvious over any of the primary references, in view of the secondary references. Since claims 1-13 have not been canceled by amendment, their rejection is maintained. As far as the method claims are concerned, the pellets are the result of the extrusion, thus accordingly, they are the final shape. The fact that after the operation is over, they are taken to someplace else, for a different operation, which might involve further shaping, is immaterial. All the references have been discussed in Paper #14 already.

8. Claims 21-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Laver 5,516,472.

9. Applicant's arguments filed 09/30/02 have been fully considered but they are not persuasive. References must be considered for all that they disclose and must not be

limited to their preferred embodiments or working examples. In-re Mills, 470 F.2d 649, 176 USPQ 196. Any one of the polymers listed in column 6, lines 51-53 can be substituted for polyethylene in Recipes I-IV. The rejection is maintained.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 28-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laver 5,516,472, in view of Cope 5,847,016, Cope 5,951,927 or Cope 6,066,680, further in view of Waki et al. 4,800,214 or Brandt 6,117,924.

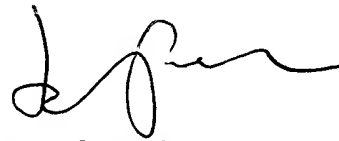
12. Laver recites PVC in column 6, lines 51-52, cellulosic fiber/polymer ratios in column 6, lines 61-64, lubricants, with their concentrations, in column 7, lines 18-22 and from column 7, line 50, to column 8, line 7. The other references have been discussed already in Paper #14. It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to add the impact modifier and stabilizer of the Cope patents and the PVC and the modifiers of Waki et al. and Brandt, to the compound of Laver, since these ingredients have been customarily used in quality wood replacement compounds comprising polyvinyl chloride-cellulosic fiber blends.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Szekely whose telephone number is 703-308-2460. The examiner can normally be reached on Tuesday-Friday 7:00 a.m.-5:30 p.m.

Art Unit: 1714

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 703-306-2777. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Peter Szekely
Primary Examiner
Art Unit 1714

P.S.
November 8, 2002